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10  
11

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13

14 LARRY G. PHILPOT,  
15  
16 Plaintiff,

17 v.

18 HUBPAGES INC.,  
19  
20 Defendant.

CASE NO. 3:18-cv-5284

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT, VIOLATIONS OF  
THE DIGITAL MILLENIUM  
COPYRIGHT ACT**

JURY TRIAL DEMANDED

1 **COMPLAINT**

2 Larry G. Philpot (“Mr. Philpot” or “Plaintiff”) complains against defendant Hubpages Inc.  
3 (“Hubpages” or “Defendant”) as follows:

4 1. Mr. Philpot is a professional photographer who has taken many well-known and sought  
5 after photographs of musicians live in concert. Defendant Hubpages has used Mr. Philpot’s  
6 photographs of musicians Willie Nelson, Norah Jones, and Tom Petty for its own commercial  
7 gain, without Mr. Philpot’s permission and with the photographs’ copyright management  
8 information stripped. As such, Hubpages is liable to Mr. Philpot for damages for copyright  
9 infringement and violations of the Digital Millennium Copyright Act.

10  
11 **JURISDICTION AND VENUE**

12 2. This civil action arises under the United States Copyright Act, 17 U.S.C. § 101 *et seq.*,  
13 and under the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1202 *et seq.* This  
14 Court has jurisdiction over this action under 28 U.S.C. § 1331, 17 U.S.C. § 501(a), 17 U.S.C. §  
15 1202, and 28 U.S.C. § 1338.

16 3. This Court has personal jurisdiction over Hubpages by virtue of the fact that it transacts  
17 and does business in this District. Upon information and belief, Hubpages is registered to do  
18 business in California; it maintains business locations in San Francisco, Oakland, and  
19 Berkeley, California; and its agent for service of process is located in Burlingame, California.  
20 Hubpages’s website targets residents in this District. A substantial part of the relevant events  
21 alleged in this Complaint occurred in this District.

22 4. Venue is also proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a)  
23 because Hubpages is registered to do business in California; because it transacts, does business,  
24 and maintains business locations in this District; because it has a designated agent located in  
25 this District; because its website targets residents in this District; and because a substantial part  
26 of the events or omissions giving rise to the claims occurred in this District.

**PARTIES**

5. Mr. Philpot is a professional photographer whose work focuses exclusively on concert events across the United States. Mr. Philpot resides in Indianapolis, Indiana. Mr. Philpot's photographs of leading concert performers are known for their high quality and acuity.

6. Defendant Hubpages is a Delaware corporation that is registered to do business in California, with a business location at 2120 University Ave., Berkeley, California 94704; a business location at 1429 Channing Way, Berkeley, California 94702; a business location at 95 Minna Street, 3<sup>rd</sup> floor, San Francisco, California 94105; a business location at 1111 Broadway, Floor 3 (Room #169), Oakland, California 94607; and an agent for service of process located at 1561 Drake Avenue, Burlingame, California 94040.

7. On information and belief, Hubpages owns and operates a website at [www.hubpages.com](http://www.hubpages.com). The website contains articles on a wide variety of topics. Individuals may sign up for a Hubpages account and submit articles for publication on the website, as well as comment on articles that have been written by others. Hubpages pays authors for their articles. Hubpages provides authors with a list of topics to choose from; pre-screens, edits, and deletes content; monitors postings; and bans articles with certain topics from being posted. The website generates revenue from advertisements.

**FACTS COMMON TO ALL COUNTS**

8. On October 4, 2009, Mr. Philpot took a photograph of entertainer Willie Nelson in performance at Farm Aid 2009 in Saint Louis, Missouri (the "Nelson Photograph"). The photograph is an original work that is copyrighted under United States law and was registered with the United States Copyright Office on September 5, 2012 with the Certificate Number VAu 1-132-411. Plaintiff's registration is attached hereto as **Exhibit A**.

9. Mr. Philpot has been and is the sole owner of the copyright in the Nelson Photograph. The Nelson Photograph was uploaded on May 31, 2011 to the Wikimedia website at the following URL:

[https://commons.wikimedia.org/wiki/File:Willie\\_Nelson\\_at\\_Farm\\_Aid\\_2009.jpg](https://commons.wikimedia.org/wiki/File:Willie_Nelson_at_Farm_Aid_2009.jpg). The Nelson Photograph from Wikimedia is attached as **Exhibit B**.

1 10. Mr. Philpot agreed to make the Nelson Photograph available through the website  
2 Wikimedia for reproduction, distribution, public display, public performance, and public  
3 digital performance of the photograph and derivative works, solely under and pursuant to the  
4 terms of the Creative Commons Attribution 2.0 Generic license (the “CC 2.0 License”). The  
5 terms of the CC 2.0 License require the licensee to keep intact all copyright notices for the  
6 work and to provide attribution to the author if the work, or a derivative work, is distributed,  
7 publicly displayed, publicly performed, or publicly digitally performed. Mr. Philpot requires  
8 that the photograph be attributed to him as part of the license. Screenshots of the license and  
9 attribution requirements, taken on August 23, 2018, are attached as **Exhibit C**. The  
10 requirements have been in effect since the photograph was first uploaded to Wikimedia.

11 11. On the Wikimedia website, the Nelson Photograph contains copyright management  
12 information (CMI), including metadata, which indicates that Mr. Philpot is the author of the  
13 photograph, that the photograph must be attributed to Mr. Philpot, and that the photograph is  
14 copyrighted by Mr. Philpot.

15 12. Defendant and/or its agents have infringed Mr. Philpot’s copyright in the Nelson  
16 Photograph by reproducing, publicly displaying, and publicly distributing the Nelson  
17 Photograph on the hubpages.com website without authorization or proper attribution as required  
18 under the terms of the applicable license. Hubpages and/or its agents used the Nelson  
19 Photograph as part of an article posted five years ago titled “Do You Know The Top 12 Country  
20 Songs Ever.” Hubpages and/or its agents did not receive permission from Mr. Philpot to use the  
21 Nelson Photograph, nor did they provide proper attribution to Mr. Philpot with the photograph.  
22 A screenshot of the infringement, taken on August 23, 2018, is attached hereto as **Exhibit D**. As  
23 of the date of this Complaint, the infringement is still live and can be viewed at the following  
24 URL: [https://hubpages.com/entertainment/forum/106714/do-you-know-the-top-12-country-](https://hubpages.com/entertainment/forum/106714/do-you-know-the-top-12-country-songs-ever)  
25 [songs-ever](https://hubpages.com/entertainment/forum/106714/do-you-know-the-top-12-country-songs-ever). On information and belief, the statute of limitations for the Nelson Photograph has  
26 not expired because Defendant’s infringement is ongoing.

1 13. Defendant owns, operates, and/or has a financial interest in or benefits from the  
2 hubpages.com website. Hubpages and/or its agents used the Nelson Photograph to enhance the  
3 content on its website, drawing more visitors to the website, all for Defendant's financial gain.

4 14. Defendant and/or its agents have reproduced, publicly distributed, and publicly  
5 displayed the Nelson Photograph with the DMCA copyright management information,  
6 including metadata, stripped from the photograph.

7 15. Defendant misrepresented that it owned the copyright in the Nelson Photograph with  
8 the notice that appears on every page of its website which states: "Copyright © 2018 HubPages  
9 Inc. and respective owners." A screen shot of the notice, taken on August 23, 2018, is attached  
10 as **Exhibit E**.

11 16. On or about November 20, 2014 and March 21, 2015, Mr. Philpot sent cease and desist  
12 letters regarding the Nelson Photograph to Hubpages. Hubpages responded to the cease and  
13 desist letters via email on December 2, 2014 and April 8, 2015. Hubpages falsely claimed to  
14 be protected by the Digital Millennium Copyright Act (DMCA) Safe Harbor and as of the date  
15 of this Complaint has failed to remove the infringement. Copies of the cease and desist letters  
16 are attached as **Exhibit F**. A copy of the email correspondence is attached as **Exhibit G**.

17 17. On information and belief, Hubpages is not protected by the DMCA Safe Harbor  
18 because it only protects service providers for infringement that occurs "at the direction of a  
19 user." 17 U.S.C. § 512(c)(1) (emphasis added). Here, the infringement was "at the direction  
20 of" Hubpages, because Hubpages exercises considerable editorial control over the articles on  
21 its website. Furthermore, the infringement was "at the direction of" Hubpages agents rather  
22 than users, because Hubpages pays its authors for their articles. In the alternative, even if  
23 Hubpages did qualify for the Safe Harbor—which it does not—Mr. Philpot's cease and desist  
24 letters that were provided to Defendant's designated DMCA agent substantially complied with  
25 the notice requirements of Section 512(c)(3)(A), and therefore under Section 512(c)(1)(A),  
26 Hubpages was required to remove or disable access to the infringement. *See* 17 U.S.C. §  
27 512(c)(1)(A) & (3)(A).

1 18. On October 2, 2010, Mr. Philpot took a photograph of entertainer Norah Jones in  
2 performance at Farm Aid 2010 in Milwaukee, Wisconsin (the “Jones Photograph”). The  
3 photograph is an original work that is copyrighted under United States law and was registered  
4 with the United States Copyright Office on May 17, 2013 with the Certificate Number VAu 1-  
5 164-648. Plaintiff’s registration is attached hereto as **Exhibit H**.

6 19. Mr. Philpot has been and is the sole owner of the copyright in the Jones Photograph.  
7 Mr. Philpot uploaded the Jones Photograph on October 4, 2013 to the Wikimedia website at the  
8 following URL: <https://commons.wikimedia.org/wiki/File:Norah.jpg>. The Jones Photograph  
9 from the Wikimedia website is attached as **Exhibit I**.

10 20. Mr. Philpot agreed to make the Jones Photograph available through the website  
11 Wikimedia for reproduction, distribution, and public performance of the photograph and  
12 adaptations, solely under and pursuant to the terms of the Creative Commons Attribution-  
13 ShareAlike 3.0 Unported license (the “CC 3.0 License”). The terms of the CC 3.0 License  
14 require the licensee to keep intact all copyright notices for the work and to provide attribution  
15 to the author if the work, or an adaptation, is distributed or publicly performed. Mr. Philpot  
16 requires that the photograph be attributed to him as part of the license. Screenshots of the  
17 license and attribution requirements, taken on August 23, 2018, are attached as **Exhibit J**. The  
18 requirements have been in effect since Mr. Philpot first uploaded the photograph to Wikimedia.

19 21. On the Wikimedia website the Jones Photograph contains copyright management  
20 information (CMI), including metadata, which indicates that Mr. Philpot is the author of the  
21 photograph, that the photograph must be attributed to Mr. Philpot, and that the photograph is  
22 copyrighted by Mr. Philpot.

23 22. Defendant and/or its agents have infringed Mr. Philpot’s copyright in the Jones  
24 Photograph by reproducing, publicly displaying, and publicly distributing the Jones Photograph  
25 on the hubpages.com website without authorization or proper attribution as required under the  
26 terms of the applicable license. Hubpages and/or its agents used the Jones Photograph as part of  
27 an article posted in 2014 titled “Love Songs that Say ‘I Love You’.” Hubpages and/or its agents  
28 did not receive permission from Mr. Philpot to use the Jones Photograph, nor did they provide

1 proper attribution to Mr. Philpot with the photograph; rather, the photograph is misattributed to  
2 “Wikipedia.” A screenshot of the infringement, taken on August 24, 2018, is attached hereto as  
3 **Exhibit K**. As of the date of this Complaint, the infringement is still live and can be viewed at  
4 the following URL: <https://hubpages.com/entertainment/Songs-that-Say-I-Love-You>. Plaintiff  
5 discovered the infringement within three years prior to the filing of this Complaint.

6 23. Defendant owns, operates, and/or has a financial interest in or benefits from the  
7 hubpages.com website. Hubpages and/or its agents used the Jones Photograph to enhance the  
8 content on its website, drawing more visitors to the website, all for Defendant’s financial gain.

9 24. Defendant and/or its agents have reproduced, publicly distributed, and publicly  
10 displayed the Jones Photograph with the DMCA copyright management information, including  
11 metadata, stripped from the photograph.

12 25. Defendant and/or its agents misrepresented that they owned the copyright in the Jones  
13 Photograph with the notice that appears on every page of its website which states: “Copyright  
14 © 2018 HubPages Inc. and respective owners” and the copyright notice on the article which  
15 states: “© 2014 [Hubpages author].” Screenshots of the notices, taken on August 23, 2018 and  
16 August 24, 2018, are attached as **Exhibit K** and **Exhibit L**.

17 26. On June 28, 2013, Mr. Philpot took a photograph of entertainer Tom Petty in  
18 performance in Milwaukee, Wisconsin (the “Petty Photograph”). The photograph is an  
19 original work that is copyrighted under United States law and was registered with the United  
20 States Copyright Office on August 21, 2013 with the Certificate Number 1-164-624.  
21 Plaintiff’s registration is attached hereto as **Exhibit M**.

22 27. Mr. Philpot has been and is the sole owner of the copyright in the Petty Photograph.  
23 The Petty Photograph was uploaded on July 19, 2013 to the Wikimedia website at the  
24 following URL: [https://commons.wikimedia.org/wiki/File:Tom\\_Petty\\_2.jpg](https://commons.wikimedia.org/wiki/File:Tom_Petty_2.jpg). The Petty  
25 Photograph from Wikimedia is attached as **Exhibit N**.

26 28. Mr. Philpot agreed to make the Petty Photograph available through the website  
27 Wikimedia for reproduction, distribution, and public performance of the photograph and  
28 adaptations, solely under and pursuant to the terms of the Creative Commons Attribution-

1 ShareAlike 3.0 Unported license (the “CC 3.0 License”). The terms of the CC 3.0 License  
2 require the licensee to keep intact all copyright notices for the work and to provide attribution  
3 to the author if the work, or an adaptation, is distributed or publicly performed. Mr. Philpot  
4 requires that the photograph be attributed to him as part of the license. Screenshots of the  
5 license and attribution requirements, taken on August 23, 2018, are attached as **Exhibit O**.  
6 The requirements have been in effect since the photograph was first uploaded to Wikimedia.

7 29. On the Wikimedia website, the Petty Photograph contains copyright management  
8 information (CMI), including metadata, which indicates that Mr. Philpot is the author of the  
9 photograph, that the photograph must be attributed to Mr. Philpot, and that the photograph is  
10 copyrighted by Mr. Philpot.

11 30. Defendant and/or its agents have infringed Mr. Philpot’s copyright in the Petty  
12 Photograph by reproducing, publicly displaying, and publicly distributing the Petty Photograph  
13 on the hubpages.com website without authorization or proper attribution as required under the  
14 terms of the applicable license. Hubpages and/or its agents used the Petty Photograph as part of  
15 an article posted in 2012 titled “20 Facts About Gainesville, FL.” Hubpages and/or its agents  
16 did not receive permission from Mr. Philpot to use the Petty Photograph, nor did they provide  
17 proper attribution to Mr. Philpot with the photograph. A screenshot of the infringement, taken  
18 on February 28, 2016, is attached hereto as **Exhibit P**. Plaintiff discovered the infringement  
19 within three years prior to the filing of this Complaint.

20 31. Defendant owns, operates, and/or has a financial interest in or benefits from the  
21 hubpages.com website. Hubpages and/or its agents used the Petty Photograph to enhance the  
22 content on its website, drawing more visitors to the website, all for Defendant’s financial gain.

23 32. Defendant and/or its agents have reproduced, publicly distributed, and publicly  
24 displayed the Petty Photograph with the DMCA copyright management information, including  
25 metadata, stripped from the photograph.  
26  
27  
28



**FIRST CLAIM FOR RELIEF**

**Copyright Infringement, 17 U.S.C. § 501**

33. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 32, above.

34. Mr. Philpot is the owner of all rights, title, and interest in the copyrights to the Nelson, Jones, and Petty Photographs, which consist of material wholly original with Plaintiff and which are copyrighted subject matter under the laws of the United States. Mr. Philpot has complied in all respects with the Copyright Act and all of the laws of the United States governing copyrights. The Nelson, Jones, and Petty Photographs have been timely registered with the United States Copyright Office, including for purposes of Plaintiff's recovery of attorneys' fees and statutory damages.

35. Defendant and/or its agents have directly infringed Mr. Philpot's copyrights in the Nelson, Jones, and Petty Photographs by using the photographs on the hubpages.com website, thus reproducing, displaying publicly, and distributing to the public the photographs for purposes of trade in violation of 17 U.S.C. § 501 *et seq.*, without attributing the photographs to Mr. Philpot and on information and belief, after removing and/or altering the photographs' identifying copyright management information, including metadata, and/or having knowledge of its removal and/or alteration.

36. On information and belief, Defendant and/or its agents have willfully infringed Mr. Philpot's copyrights in the Nelson, Jones, and Petty Photographs by using the photographs on the hubpages.com website with knowledge that the photographs were protected by copyright and without attributing the photographs to Mr. Philpot, after taking the photographs from Wikimedia and/or other online locations which included copyright management information, including metadata, and removing and/or altering the copyright management information and/or having knowledge of its removal and/or alteration, and in addition by failing to remove the photographs after receiving Mr. Philpot's cease and desist letters.

37. As a result of Defendant's and/or its agents' acts of copyright infringement as alleged herein, Plaintiff has suffered substantial damages in an amount to be established at trial.

1 38. As a result of Defendant's and/or its agents' acts of copyright infringement as alleged  
 2 herein, Defendant has obtained direct and indirect profits it would not otherwise have realized  
 3 but for its infringements. As such, Plaintiff is entitled to disgorgement of Defendant's profits  
 4 directly and indirectly attributable to Defendant's infringements, in an amount to be established  
 5 at trial.

6 39. Plaintiff is informed and believes and thereon alleges that Defendant and/or its agents  
 7 have committed the acts of copyright infringement alleged herein with actual knowledge or  
 8 reckless conduct, thus acting in disregard to Plaintiff's rights such that Plaintiff is entitled to a  
 9 finding of willful infringement and enhanced damages.

10  
 11 **SECOND CLAIM FOR RELIEF**  
 12 **For Violations of the Digital Millennium Copyright Act,**  
 13 **17 U.S.C. §§ 1202 and 1203**

14 40. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 39  
 15 above.

16 41. Plaintiff is informed and believes and thereon alleges that Defendant and/or its agents  
 17 violated 17 U.S.C. §1202 et seq. by intentionally removing and/or altering the Nelson, Jones,  
 18 and Petty Photographs' identifying copyright management information, including metadata,  
 19 without the authority of Mr. Philpot or the law, and/or by distributing the photographs with the  
 20 copyright management information removed and/or altered, knowing the same had been  
 21 removed or altered without the authority of Mr. Philpot or the law, knowing or having  
 22 reasonable grounds to know that such actions would induce, enable, facilitate, or conceal an  
 23 infringement of Plaintiff's rights.

24 42. Specifically, Plaintiff is informed and believes, and thereon alleges, that Defendant  
 25 and/or its agents took the Nelson, Jones, and Petty Photographs from Wikimedia and/or other  
 26 online locations which included copyright management information, including metadata, and  
 27 without the authority of Mr. Philpot or the law, removed and/or altered that copyright  
 28 management information, and/or that Defendant and/or its agents took the photographs

1 knowing that the copyright management information had been removed and/or altered without  
2 the authority of Mr. Philpot or the law, and used the photographs on the hubpages.com website  
3 knowing, or having reasonable grounds to know, that it would induce, enable, facilitate, or  
4 conceal an infringement of Plaintiff's rights. Defendant continued to display the scraped and  
5 altered Nelson, Jones, and Petty Photographs on its website after receiving written demands to  
6 cease and desist infringement from Plaintiff.

7 43. Plaintiff is informed and believes and thereon alleges that Defendant and/or its agents  
8 further violated 17 U.S.C. §1202 et seq. by knowingly and with the intent to induce, enable,  
9 facilitate, or conceal infringement, providing copyright management information that is false  
10 and distributing copyright management information that is false, by misattributing the Jones  
11 Photograph to Wikipedia, and by falsely representing that Defendant and/or its agents held  
12 copyright rights in the Nelson, Jones, and Petty Photographs with the copyright notices on the  
13 hubpages.com website.

14 44. The above conduct is in violation of the Digital Millennium Copyright Act and exposes  
15 Defendant to additional and enhanced common law and statutory damages and penalties,  
16 including in the form of Plaintiff's costs and attorneys' fees.

17 45. Plaintiff is informed and believes and thereon alleges that Defendant's and/or its  
18 agents' conduct as alleged herein was willful, reckless, and/or with knowledge, and that  
19 Defendant and/or its agents acted knowing, or, with respect to civil remedies under section  
20 1203, having reasonable grounds to know, that their actions would induce, enable, facilitate, or  
21 conceal an infringement of any right under this title, and that Defendant and/or its agents also  
22 acted knowingly and with the intent to induce, enable, facilitate, or conceal infringement, so  
23 that Plaintiff is entitled to seek enhanced damages and penalties.

24 46. As a result of Defendant's and/or its agents' actions, Plaintiff has suffered substantial  
25 damages in an amount to be established at trial.

26 47. As a result of Defendant's and/or its agents' actions, Defendant has obtained direct and  
27 indirect profits it would not otherwise have realized. Plaintiff is entitled to disgorgement of  
28 Defendant's profits, in an amount to be established at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

- a. That Defendant and its respective agents and employees and those acting in concert with them be enjoined from infringing Plaintiff's copyrights in any manner;
- b. That Plaintiff be awarded all profits of Defendant, plus all losses of Plaintiff, plus any other monetary advantage gained by Defendant through its infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages under the Copyright Act, 17 U.S.C. § 101 et seq.;
- c. That Plaintiff be awarded damages for Defendant's violations of 17 U.S.C. § 1202, including all available damages under 17 U.S.C. § 1203;
- d. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act 17 U.S.C. § 101 et seq.;
- e. That Plaintiff be awarded pre-judgment interest as allowed by law;
- f. That Plaintiff be awarded the costs of this action; and
- g. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Respectfully submitted,

Dated: August 28, 2018

By: /s/ Michael N. Zachary

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*Attorneys for Plaintiff*  
*Larry G. Philpot*

**DEMAND FOR JURY TRIAL**

Plaintiff Larry G. Philpot hereby demands trial by jury of all issues so triable under the law.

Respectfully submitted,

Dated: August 28, 2018

By: /s/ Michael N. Zachary

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